In the High Court of Judicature at Madras

Dated : 01.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.18755 to 18758 of 2018 &
WMP.Nos.22099 to 22106 of 2018

M/s.Reflections, rep.by its
Proprietor N.Sivakumar
...Petitioner in all the petitions

Vs

1.The Assistant Commissioner (ST),
R.S.Puram (East) Circle, Coimbatore,
Coimbatore District.

2.The Joint Commissioner (ST),
Coimbatore Division, Coimbatore,
Coimbatore District.
...Respondents in all the petitions

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the file of the 2nd Respondent in his impugned proceedings made respectively in Ref No. 10642/2010 C1 dated 10.5.2018 for the assessment year 1992-93, Ref No. 10644/2010 C1 dated 11.5.2018 for the assessment year 1994-95, Ref No. 10645/2010 C1 dated 11.5.2018 for the assessment year 1995-96 and Ref No.10648/2010 C1 dated 11.5.2018 for the assessment year 1998-99 and quash the same as illegal and contrary to the scheme of the Act.



For Petitioner : Mrs.R.Hemalatha
For Respondents : Mrs.G.Dhana Madhri, GA



COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondents. Heard both and perused the materials placed on record including the written instructions given by the second respondent to the learned Government Pleader (Taxes) vide letter dated 27.7.2018.

2. The applications filed by the petitioner for settlement under the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010 (hereinafter called the Settlement Act) have

been rejected by the second respondent. The reasons for rejection being that the petitioner is not a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959, that orders were passed by the Commercial Tax Officer concerned raising the demands on the basis of the calculation made by the officers of the Enforcement Wing and that the appeals filed against the orders passed by the Commercial Tax Officer concerned before the Appellate Assistant Commissioner (CT), Coimbatore and also the second appeals filed before the Sales Tax Appellate Tribunal were dismissed. The second respondent further referred to the recommendation made by the first respondent that the petitioner is not eligible for enrollment under the Settlement Act.

3. Admittedly, before the impugned orders are passed, the petitioner did not have any opportunity to submit their defenses. This opportunity ought to have been provided by the second respondent since there is a reference to the recommendation made by the first respondent stating that the petitioner is not eligible for enrollment under the Settlement Act. One other reason given by the second respondent is that the appeals filed by the petitioner against both the assessment orders before the Appellate Authority as well as the orders passed by the Appellate Authority before the Tribunal were dismissed. This Court finds that there is no disqualification on this aspect to avail the benefits under the Settlement Act. In fact, only if the appeals are pending, the dealer cannot approach the Joint Commissioner concerned under the Settlement Act. Therefore, the said reason is also incorrect.

4. The other reason given is that the orders have been passed by the Commercial Tax Officer concerned based on the calculations made by the officers of the Enforcement Wing. In the considered view of this Court, if the same is true, it would amount to abdication of statutory duties by the Assessing Officer by merely following the proposals made by the Enforcement Wing officials.

5. So far as the reason that the petitioner is not a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 is concerned, it is seen that the respondent - Department issued notices to the petitioner calling upon them to avail the benefit under the Settlement Act and intimating them that the last date for filing the applications was 31.12.2010. The petitioner also presented the applications and remitted tax. After the applications were processed, the second respondent (predecessor officer) issued the communications dated 08.2.2011 to the Assessing Officer calling upon various details to be produced. Thus, the petitioner has been led to believe that their applications have been entertained and would be processed. Hence, the impugned orders rejecting the applications of the petitioner are not tenable.

6. In the written instructions given to the learned

Government Pleader by the second respondent, a totally different reason has been given stating that the petitioner is not entitled to make payment by cheque.

7. Admittedly, this said stage has crossed because tax has been remitted, the applications were entertained and the Assessing Officer was directed to furnish various documents by proceedings dated 08.2.2011 namely

> "1. Assessment order copy
> 2. Demand as per assessment order
> 3. Payment made upto the date of application (with details of remittances)
> 4. Arrears as on date of application
> 5. Settlement amount due
> 6. Amount paid under the scheme (with remittance details) and
> 7. Certificate to the effect that the application is eligible for the benefit of the scheme and all the columns are properly filled up."

8. Therefore, in the considered view of this Court, it will be too late on the part of the second respondent to now state that the applications could not have been entertained.

9. For the above reasons, the writ petitions are allowed, the impugned orders are quashed and the matters are remanded to the second respondent for a fresh consideration. The second respondent shall consider the applications of the petitioner dated 31.12.2010 on merits and in accordance with the provisions of the Settlement Act and after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To
1.The Assistant Commissioner (ST),
R.S.Puram (East) Circle,
Coimbatore,
Coimbatore District.

2.The Joint Commissioner (ST),
Coimbatore Division, Coimbatore,
Coimbatore District.

+4cc to Mr.R.HEMALATHA, Advocate, S.R.No. 53017
+1cc to the Government Pleader, S.R.No. 52531

WP.Nos.18755 to 18758 of 2018&
WMP.Nos.22099 to 22106 of 2018

PA(CO)
TR(20/08/2018)